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No. 84-1569

In The

# Supreme Court of the United States

October Term, 1984

BARDOMIANO AGUILAR and ROSA AGUILAR, husband and wife, suing pursuant to C.C.P. § 376, and suing individually,

*Petitioners,*

v.

COUNTY OF LOS ANGELES, etc., et al.,

*Respondents.*

**ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT**

## RESPONDENT'S BRIEF IN OPPOSITION

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## QUESTION PRESENTED

In a medical malpractice action brought by the parents of a minor child to recover for medical expenses and lost services resulting from alleged prenatal injuries suffered by the child, the following issue is presented:

Whether the District Court correctly exercised its discretion in ordering Petitioners' action dismissed, pursuant to Rule 19, Federal Rules of Civil Procedure, upon determining that Petitioners' child was an indispensable party whose joinder would defeat federal diversity jurisdiction, and whether the Ninth Circuit Court of Appeals correctly affirmed the order of dismissal under the circumstances?

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## ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

## RESPONDENT'S BRIEF IN OPPOSITION

Respondent County of Los Angeles respectfully requests that this Court deny the Petition for Writ of Certiorari, seeking review of the Ninth Circuit's opinion in this case. That opinion is reported at 751 F.2d 1089.

## INTRODUCTION

Petitioners have failed to identify any cogent reasons why their Petition for Writ of Certiorari ("Petition")

should be granted by this Court. Indeed, there are none. The Ninth Circuit Court of Appeals' decision is wholly consistent with the principles articulated by this Court in *Provident Tradesmens Bank & Trust Co. v. Patterson,* 390 U.S. 102, 19 L.Ed.2d 936 (1968) and the Ninth Circuit's own decisions in cases such as *Bakia v. County of Los Angeles,* 687 F.2d 299 (9th Cir. 1982) and *Walsh v. Centeio,* 692 F.2d 1239 (9th Cir. 1982), with respect to the proper application of Rule 19, Federal Rules of Civil Procedure.

The Ninth Circuit was required to and did correctly determine the applicable California state law regarding the principles of collateral estoppel which formed the predicate for both the District Court's and its own determination that dismissal of Petitioners' federal action was mandated because of a missing indispensable party, Petitioners' son, Jaime Aguilar, who could not be joined without defeating the District Court's diversity jurisdiction. In arguing otherwise, Petitioners request that this Court exercise its discretionary jurisdiction without consideration of an important governing criteria. As stated by this Court in *Huddleston v. Dwyer,* 322 U.S. 232, 237, 88 L.Ed. 246 (1944), "ordinarily we accept and therefore do not review, save in exceptional cases, the considered determination of questions of state law by the federal appellate courts." Since no exceptional circumstances are shown in the instant case and for other reasons to be examined in detail below, the Petition should be denied.

## REASONS FOR DENYING THE WRIT

### I.

**The Ninth Circuit Court of Appeals' Holding That Jaime Aguilar Had An Interest Relating To The Subject Of The Action Which Might Be Impaired By Virtue Of The California Doctrine Of Collateral Estoppel, Had He Not Been Joined In The Federal Action, Comports With The Letter And Spirit Of Rule 19(a), Federal Rules Of Civil Procedure.**

In this Court's landmark decision of *Shields v. Barrow*, 58 U.S. (17 How.) 130, 139, 15 L.Ed. 158 (1854), indispensable parties were defined as

> "[p]ersons who not only have an interest in the controversy, but an interest of such a nature that a final decree cannot be made without either affecting that interest, or leaving the controversy in such a condition that its final termination may be wholly inconsistent with equity and good conscience."[1]

Rule 19(a) defines the persons who are needed for a just adjudication of an action as follows:

> "A person . . . whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among

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[1] As Mr. Justice Harlan more recently declared in *Provident Trademens Bank & Trust Co. v. Patterson, supra*, 390 U.S. 102, 124, 19 L.Ed.2d 936, the generalizations of *Shields* "are still valid today, and they are consistent with the requirements of Rule 19. . . . Indeed, the . . . *Shields* definition states, in rather different fashion, the criteria for decision announced in Rule 19(b)."

> those already parties, or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. . . ."

As recently explained by the Court in *Lopez, et al. v. Martin Luther King, Jr. Hospital, et al.*, 97 F.R.D. 24 (C.D.Cal. 1983), at p. 28, a decision heavily relied on by both the Ninth Circuit and the District Court:

> "Rule 19 provides an analytical framework for the Court in considering the necessity of joinder, and is subdivided into two parts. Subdivision (a) defines those persons who should be joined if at all feasible. If joinder is not feasible, then subdivision (b) is applied to resolve the question of whether the action should proceed without that party. This is a two-step analysis—the issues involved in the subdivision (b) determination are not reached until the Court determines first whether non-joinder would, under (a)(1) prevent the Court from according complete relief to the parties present, or under (a)(2), impair the absentee's interest or prejudice the persons already parties by subjecting them to a risk of double or inconsistent obligations. *Bakia v. County of Los Angeles*, 687 F.2d 299, 301 (9th Cir. 1982)."

Whether tested by the principles articulated in *Shields* or the criteria set forth in Rule 19(a), the Ninth Circuit and the District Court correctly determined that Jaime Aguilar was a person who should have been joined since (a) he had an interest relating to the subject of this action; and (b) disposition of the action in his absence may, as a practical matter, have impeded or impaired his ability to protect his interest.

Petitioners' contention that their child had no such impairable interest (Pet., pp. 22-29) should be rejected for the reasons expressed by the Court in *Lopez, et al. v. Martin Luther King, Jr. Hospital, supra,* 97 F.R.D. at pp. 29-30:

> "Plaintiffs construe the 'interest' permitted under rule 19(a)(2) much too narrowly. The Court recognizes that the alleged interest must be something more than a financial interest or an interest of convenience. However, the Rule does not require a 'legal' interest; it merely requires 'an interest relating to the subject of the action.' Whether this interest exists must be determined from a practical perspective, not through the adoption of strict legal definitions and technicalities. To be sure, the parents' and the child's substantive legal rights differ. However, 'the concept of substantive severability is no longer the guiding star of the joinder problem.' . . . Instead, the Court must consider all the relevant circumstances in classifying the interest at stake.
>
> "Plaintiffs' construction of the interest requirement in this case ignores the practical consequences to the child if the judgment in the federal action is adverse to the parents. Plaintiffs assert that since the child has no legal interest in this litigation, there is no danger that any issues resolved herein will be decided for purposes of the child's state court action. This analysis places the cart before the horse. The relevant inquiry is, if there is a possibility that collateral estoppel will be applied by the California court, then it is axiomatic that the child has an interest in this action. . . ."

As recognized by the Court in *Lopez, supra,* and the Ninth Circuit here, Jaime Aguilar's absence from the instant action subjected him to potential prejudice if the concept of collateral estoppel were applied to defeat his claim in state court.

The doctrine of collateral estoppel is a component of the doctrine of res judicata. *Todhunter v. Smith,* 219 Cal. 690, 695 (1934), explains:

> "The doctrine of *res judicata* has a double aspect. A former judgment operates as a bar against a second action upon the same cause, but in a later action upon a different claim or cause of action, it operates as an estoppel or conclusive adjudication as to such issues in the second action as were actually litigated and determined in the first action." (Emphasis in original.)[2]

Collateral estoppel may properly be invoked when it appears in a later proceeding that there was a former proceeding in which the identical issues were raised and decided, that there was a final judgment on the merits in the first proceeding, and that the party against whom the plea of collateral estoppel is asserted was a party, or in privity with a party, to the prior adjudication. *Clemmer v. Hartford Insurance Co.,* 22 Cal.3d 865, 874 (1978); *Bernhard v. Bank of America,* 19 Cal.2d 807, 813 (1942).

Since identical issues of fact and law were presented in both the federal and state actions and since a final judgment might eventually have been entered in this action had the District Court permittted the present parties to continue with the lawsuit, the doctrine of collateral estoppel would unquestionably have applied to any judgment entered in this action if it could be said that the

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[2] The doctrine of collateral estoppel serves important public policies pertinent to the application of Rule 19. "It seeks to curtail multiple litigation causing vexation and expense to the parties and wasted effort and expense in *judicial administration.*" *Wood v. Herson,* 39 Cal.App.3d 737, 745 (1974); original emphasis.

Petitioner parents herein and their minor son were in privity. The law in California could clearly so provide, as we now explain.

In its traditional sense, privity denotes a mutual or successive relationship to the same rights of property or such an identification in interest of one person with another as to represent the same legal rights. *Clemmer v. Hartford Insurance Co., supra,* 22 Cal.3d 865, 876; *Teitelbaum Furs, Inc. v. Dominion Ins. Co.,* 58 Cal.2d 601, 604 (1962). Here, in suing for the personal injuries sustained by their child, Petitioners necessarily represented their own and their child's mutual interests—financial, familial and otherwise. That this is so is strongly suggested by the following decisions.

1. In *Armstrong v. Armstrong,* 15 Cal.3d 942 (1976), the California Supreme Court held that children were collaterally estopped to relitigate issues settled in a suit involving their mother. In that case, two children sued their father for past child support and misappropriation of their trust assets; they complained of a property settlement agreement, executed by their parents and incorporated into an interlocutory decree of divorce, which provided for child support of $125 per month, to be offset by payments made to the children from a trust previously established for them by a grandparent.

Agreeing it was improper for the father to reduce his support obligation by resorting to the children's trust fund, the Supreme Court nevertheless denied the children's right to collaterally attack the judgment. Holding that the children were bound by the divorce judgment, the Court stated (at pp. 951-952):

> "The doctrinal reach of the res judicata bar extends . . . to those persons 'in privity with' parties [citation]. As has been said, in considering application of the doctrine, courts examine the practicalities of the situation and attempt to determine whether plaintiffs are 'sufficiently close to the original case to afford application of the principle of preclusion' [citation]. We have previously held that privity exists where the person involved is . . . 'so identified in interest with another that he represents the same legal right.' [Citations.] In the present case, plaintiffs' mother was entrusted with their care and custody and was a proper representative of their interests. . . . For this reason, we conclude that plaintiffs are bound by the judgment in the divorce action to which their mother was a party."

2. In *Borer v. American Airlines, Inc.*, 19 Cal.3d 441 (1977), the California Supreme Court established that, in suing for medical expenses and lost services resulting from injury to their minor offspring, the parents effectively acted as a representative of their child. The California Supreme Court explained (*id.* at 452):

> "While the parent lives, however, the tangible aspects of the child's loss can be compensated in the parent's *own* cause of action. As put by Stainback, J., in *Halberg v. Young, supra,* 41 Hawaii 634, 640 . . . , 'where a parent has been injured by the negligent act of another the parent will recover from the other full damage which he has sustained, including such inability, if any, to properly care for his children, and thus the parent's ability to carry out his duty to support and maintain the child has not, in a legal sense, been destroyed or impaired by the injury to him.' (*Suter v. Leonard, supra,* 45 Cal.App.3d 744, 748.)"

3. The identity of interests (i.e., privity) between an injured plaintiff-spouse-parent and his or her heirs was

authoritatively established by this Court in *Sea-Land Services v. Gaudet*, 414 U.S. 573, 39 L.Ed.2d 9 (1974). There, plaintiff's husband won a personal injury action, collected on his judgment and then died. Plaintiff then brought a wrongful death action. While this Court held the former recovery did not bar suit by decedent's wife, the doctrine of collateral estoppel was applied to preclude relitigation of those matters previously decided: "[N]onparties may be collaterally estopped from relitigating issues necessarily decided in a suit brought by a party who acts as a fiduciary representative for the beneficial interest of the nonparties." 414 U.S. at p. 593; fn. omitted. And "when a decedent brings his own personal-injury action during his lifetime and recovers damages for his lost wages he acts in a fiduciary capacity to the extent that he represents his dependents' interests in that portion of his prospective earnings which, but for his wrongful death, they had a reasonable expectation of his providing for their support." 414 U.S. at p. 594; fn. omitted.

With respect to the identical liability issue to be tried in the second lawsuit, this Court observed (*id.* at pp. 594-595):

> "Since the decedent's recovery of any future wages will normally be dependent upon his fully litigating that issue, we need not fear that applying principles of collateral estoppel to preclude decedent's dependents' claim for a portion of those future wages will deprive the dependents of their day in court."

4. *Secrest v. Pacific Electric Ry. Co.*, 60 Cal.App.2d 746 (1943), first established the California rule. In a comprehensive exposition of the governing law, the Court explained (at p. 750):

> "'If a judgment in favor of the injured party would have the effect of barring the cause of action for wrongful death, it seems obvious that a judgment adverse to him would a fortiori have the same effect. . . .'"

After discussing the pertinent policy considerations, the Court adopted the view, represented by the weight of authority, that collateral estoppel would apply, holding as follows (at p. 751):

> "[W]hen the identical issues joined by the pleadings in the action for wrongful death were determined adversely to plaintiffs in the prior personal injury action . . . the defense of estoppel by judgment must be sustained. Because, the decision of the court in the prior action 'negatives the existence of conditions which would charge the defendant with responsibility for the death.'"

The reason the Court adopted this rule was as follows (at p. 750):

> "'. . . *such a judgment, if rendered on the issues raised in the death action, strikes at the very foundation of the cause of action, since it negatives the existence of conditions which would charge the defendant with responsibility for the death.*'" (Court's emphasis.)

5. Finally, based on decisions such as those discussed above, the Court in *Lopez, et al. v. Martin Luther King, Jr. Hospital, supra,* 97 F.R.D. 24, expressly determined that the California doctrine of collateral estoppel might indeed preclude the minor child from relitigating the issue of a defendant's negligence in the state court action. In terms dispositive of the issue presented here, the Court stated:

> "In light of the expanded application of privity for purposes of collateral estoppel, it is clear that the

> child might be barred from relitigating the issue of defendants' negligence in the state court action. Certainly the child is 'sufficiently close' to the present proceeding to justify application of the doctrine. The same attorney is litigating both actions. The mother, a party to this action, is the child's guardian ad litem in the state court action. Plaintiffs' claim that the liability issues in the two cases differ is not well founded. For successful recoveries, both actions require the proof of defendants' negligence in connection with the perinatal care of the child. . . ." *Lopez,* 97 F.R.D. at p. 31.

In response to these highly persuasive (indeed controlling) cases, Petitioners primarily rely on inapplicable decisions of other jurisdictions whose law is not controlling here. (Pet., pp. 28-29.) The only California decisions cited by Petitioners (i.e., *Kaiser Foundation Hospitals v. Superior Court,* 254 Cal.App.2d 327 (1967); *Ruddock v. Ohls,* 91 Cal.App.3d 271 (1979); and *Cortez v. County of Los Angeles,* 96 F.R.D. 427 (C.D.Cal. 1983)) furnish them no support, as we now explain.

The *Kaiser* case held that a decedent's child is not collaterally estopped by a judgment adverse to the decedent because the child's cause of action for wrongful death is a separate cause of action, not derivative from the decedent's cause of action. The holding in *Kaiser* is wrong and was properly rejected by both the District Court and the Ninth Circuit for at least three reasons:

(a) *Kaiser* is directly contrary to the California Supreme Court decision in *Zaragosa v. Craven,* 33 Cal.2d 315 (1949), which it fails to cite. In *Zaragosa,* the Court categorically rejected the rationale employed by *Kaiser,* holding that even separate and independent causes of

action are subject to a collateral estoppel defense. On this point, the Court categorically stated (*id.* at 321):

> "The fact that the cause of action for injuries to the wife is different from the cause of action for injuries to the husband is here immaterial."

(b) *Kaiser* is also contrary to the principles enunciated in *Armstrong, Borer* and *Sea-Land.*

(c) Finally, *Kaiser* was properly rejected because it utterly fails to distinguish *Secrest.*[3] Specifically, *Kaiser's* only reference to *Secrest* is in a footnote stating that *Secrest* "is distinguishable . . . on the facts." *Id.* at 334 fn. 2. However, *Secrest* cannot be dealt with so simply and it is no wonder that three justices of the California Supreme Court voted to grant a hearing in *Kaiser.*

Petitioners' reliance on the Court of Appeal decision *Ruddock v. Ohls, supra,* 91 Cal.App.3d 271, is also misplaced because it is distinguishable on public policy grounds. In *Ruddock,* the Court held that, in the absence of joinder, the right of a minor child to establish the parent-child relationship was not foreclosed under the doctrines of res judicata or collateral estoppel by a prior judgment between the mother and alleged father in a marital dissolution action. The Court noted that, in "contrast to enforcement of a child's right of a present or past support obligation, the establishment of the parent-child relationship is the *most fundamental right* a child

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[3] It will be recalled that the theoretical basis for *Kaiser* was squarely rejected in *Secrest, supra,* 60 Cal.App.2d at 751: "[W]hen the identical issues joined by the pleadings in the action for wrongful death were determined adversely to plaintiffs in the prior personal injury action, . . . the defense of estoppel by judgment must be sustained."

possesses to be equated in importance with personal liberty and the most basic of constitutional rights." *Id.* at 277-278; emphasis added. Evidencing concern that these fundamental rights of the minor might be jeopardized by broad application of the bar of collateral estoppel, the Court concluded the doctrine was inapplicable because the minor's interests might not have been properly *protected* by the mother in the prior litigation, i.e., the Court held that, where paternity rights are concerned, a parent is not necessarily in "privity" with his or her child. *Id.* at 278.

In contrast to *Ruddock,* Petitioners cannot establish that a personal-injury cause of action equates to a fundamental right, nor have they shown the existence of any public policy consideration which might have caused the California courts to refuse to apply the doctrine of collateral estoppel to the child's action, had the instant federal action been decided adversely to Petitioners' interests. Nor have Petitioners referred to a single fact suggesting that the minor's interests would not have been fully and forcefully represented in the federal action.

The Court in *Cortez,* relying substantially on *both Kaiser* and *Ruddock,* held that a minor could not be collaterally estopped by his parents' litigation of a cause of action brought pursuant to California Code of Civil Procedure section 376. But, as we have shown those decisions are not in conformity with controlling California authority. Thus, for a similar reason, *Cortez* was properly rejected by the Ninth Circuit and should be rejected by this Court also.

In light of such compelling decisions such as *Armstrong, Borer, Sea-Land, Secrest* and *Lopez,* there was, at

the very least, a clear potential that, should this lawsuit have proceeded in the absence of Jaime Aguilar and an adverse judgment entered against his Petitioner parents, prejudice to his interests in the state litigation would likely have resulted. The point is that, in pursuing this federal action, Petitioners, in effect, represented the minor's interest in attempting to establish Respondent's liability; therefore, any adjudication of liability may well have been binding on the minor in his state court action and, thus, his action could potentially have been effectively barred.[4] Thus, the Ninth Circuit's determination of the issue was clearly correct and should not be disturbed by this Court.

## II.

### The Ninth Circuit's Holding That The District Court Did Not Abuse Its Discretion In Ordering Petitioner's Federal Action Dismissed Was Beyond Question Correct Under The Equity And Good Conscience Test Provided By Rule 19(b), Federal Rules of Civil Procedure.

Having determined that joinder of Jaime Aguilar was desirable under the criteria articulated in Rule 19(a)

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[4] In determining whether a person should be joined under Rule 19(a), it is not necessary that the District Court determine to a certainty that disposition of the federal action will impair or impede the person's ability to protect his interests. Instead, all that is necessary is that it be determined that " . . . disposition of the action *may* . . . as a practical matter impair or impede his ability to protect that interest. . . ." Rule 19(a) (2) (i), Federal Rules of Civil Procedure; emphasis added. As observed by the Court in *Lopez, supra,* 97 F.R.D. at p. 31, "The existing potential that the child will be estopped from relitigating important issues critical to his action in the state court satisfies the impairment requirement."

(2), the District Court was required to order joinder unless joinder would have deprived it of subject matter jurisdiction. Since, here, joinder would have defeated the District Court's subject matter jurisdiction, it was required to apply the equity and good conscience test of Rule 19(b) to determine whether the action could proceed in the absence of the minor or whether dismissal should be ordered. *Prestenback v. Employers' Ins. Co.*, 47 F.R.D. 163, 165-166 (D.C.La.1969).

Rule 19(b) required the District Court to balance equitable considerations in determining if the action could fairly proceed without the joinder of the absent person alleged to be an indispensable party. As explained by Mr. Justice Harlan in *Provident Trademens Bank & Trust Co. v. Patterson, supra,* 390 U.S. 102, 109-111; 19 L.Ed.2d 936, Rule 19(b) suggests four interests that must be examined in each case:

> "First, the Plaintiffs have an interest in having a forum. Before the trial, the strength of this interest obviously depends upon whether a satisfactory alternative forum exists . . . Second, the defendant may properly wish to avoid multiple litigation, or inconsistent relief, or sole responsibility for a liability he shares with another. . . . [¶] Third, there is the interest of the outsider whom it would have been desirable to join. . . . [¶] Fourth, there remains the interest of the courts and the public in complete, consistent, and efficient settlement of controversies."

Analysis of these four factors, as applicable in the context of this case, provides overwhelming support for the Ninth Circuit's and the District Court's determinations that this action could not properly proceed absent the joinder of Jaime Aguilar.

### A. All Issues Presented In The Instant Action Were Fully Capable Of Litigation In (Indeed, Were More Properly Litigable In) A State Forum.

The issues presented to the District Court in this medical malpractice action were fully litigable in a state forum, particularly in that action still pending in the Los Angeles Superior Court, No. C 462798, as *Jaime Aguilar v. County of Los Angeles, etc., et al.* The issues in that action, with the exception of the type of damages sought, are identical to those in the instant case: Both actions involve the alleged malpractice committed on Jaime Aguilar; one of the named plaintiffs is the same in both proceedings, i.e., Rosa Aguilar suing in an individual capacity in District Court and in a representative capacity in the state proceeding; and the County of Los Angeles and its employees were named as defendants in both matters.

The availability of a state forum has been properly a decisive factor in cases where dismissal was ordered pursuant to Rule 19(b). In *Potomac Electric Power Co. v. Babcock & Wilcox Co.*, 54 F.R.D. 486, 491 (D.Md. 1972), the Court observed:

> "Of all the pragmatic considerations to be weighed by this Court, the one that stands out most strikingly in this case is the fact that the plaintiffs have available to them, and in fact have already filed suit in another forum. If the motions to dismiss are granted because of a lack of complete diversity of citizenship, plaintiffs are not left without a remedy. They may in such event proceed with the suit that has been brought in the Circuit Court for Baltimore County and which presents the same claims against the same defendants. . . ."

See also *Haas v. Jefferson National Bank of Miami Beach,* 442 F.2d 394, 399-400 (5th Cir. 1971) [same as *Potomac*]; *Schutten v. Shell Oil Company,* 421 F.2d 869, 875 (5th Cir. 1970) [same]; *Jamison v. Memphis Transit Management Company,* 381 F.2d 670, 676 (6th Cir. 1967) [same].

By pursuing their remedy in a state forum, Petitioners will be able to join all interested parties without suffering an iota of prejudice. *Block v. Sun Oil Corporation,* 335 F.Supp. 190, 196 (W.D. Okla. 1971); *Bixby v. Bixby,* 50 F.R.D. 277, 281 (S.D.Ill. 1970). Accordingly, the Ninth Circuit correctly held that the District Court did not err in dismissing the federal action.

### B. Failure To Join Jaime Aguilar Would Have Exposed Respondent To The Threat Of Multiple Litigation And The Risk Of Inconsistent Relief.

To the extent it might ultimately have been held that a determination in Respondent's favor in the federal action was not binding on the minor, Respondent might have been forced to relitigate the same issue of liability in the state forum, notwithstanding a victory in federal court. See *Block v. Sun Oil Corporation, supra,* 335 F.Supp. 190, 196 ["A multiplicity of litigation may result and, thus, the efforts of more than one court may be devoted to what at present appears to be a single controversy"]. Under these circumstances, it would also be possible that even if Respondent obtained a favorable judgment in the present action, it could still suffer an adverse judgment in the pending state court action. The potential inequity of such inconsistent adjudications was properly avoided by the District Court's order. In *Potomac Electric Power*

*Co. v. Babcock & Wilcox Co., supra,* 54 F.R.D. 486, 492, the Court noted:

> "[T]here is at the present time a risk that the insurers could re-litigate the issues presented here, or at a very minimum, require the defendants to come into another court and prove that principles of *res judicata* or collateral estoppel did apply in any subsequent action. If the action were to proceed with all parties named as plaintiffs, this possibility would be effectively removed. Therefore, the first factor in [Rule 19] subdivision (b) also indicates that Royal [insurance company] should be regarded as indispensable here, and that the action should be dismissed." (Emphasis in original.)

See also:

*Lopez, et al. v. Martin Luther King, Jr. Hospital, et al., supra,* 97 F.R.D. at p. 32 ["The risk that the defendants herein would be subjected to multiple litigation or inconsistent judgments is not only great, but in fact is a reality. Defendants are presently engaged in two lawsuits which derive from the same exact set of facts and require consideration of the same legal issues. Thus, multiple litigation already exists. The defendants have a strong interest in being involved in one action rather than two, and would be better off in a single action where the liability issues will be decided consistently as to all plaintiffs."].

### C. The Absent Jaime Aguilar Had An Interest Which Might Have been Prejudiced If He Was Not Joined In The Federal Proceeding.

In *Provident Trademens Bank & Trust Co. v. Patterson, supra,* 390 U.S. 102, 110, 19 L.Ed.2d 936, this Court explained the factor of prejudice to the absent party in the following terms:

> "Of course, since the outsider is not before the court he cannot be bound by the judgment rendered. This means, however, only that a judgment is not res judicata as to, or legally enforceable against, a nonparty. (Fn. omitted.) It obviously does not mean either (a) that a court may never issue a judgment that, in practice, affects a nonparty or (b) that (to the contrary) a court may always proceed without considering the potential effect on nonparties simply because they are not 'bound' in the technical sense. (Fn. omitted.) Instead, as Rule 19(a) expresses it, *the court must consider the extent to which the judgment may 'as a practical matter impair or impede his ability to protect' his interest in the subject matter. . . .*" (Emphasis added.)

Under the formulation given this factor by this Court in *Provident Trademens Bank & Trust Co.*, it is readily apparent that, even if a determination in the present action might not have been binding against Jaime Aguilar through application of the principles of res judicata, as a practical matter, an adverse judgment would still have severely prejudiced his interest, particularly if the doctrine of collateral estoppel were applied against him in the state action brought in his behalf. See *Lopez, supra*, 97 F.R.D. at p. 33. This potential result was properly avoided by the District Court's order. Thus, the Ninth Circuit correctly affirmed the order of dismissal for this reason as well.

### D. The Interests Of The Courts And The Public In Complete, Consistent And Efficient Settlement Of Controversies Were Best Served By Dismissal Of The Federal Action.

One of the most compelling reasons justifying the District Court's order of dismissal and the Ninth Circuit's

affirmance of that order, in favor of the state court action was to settle this controversy in a single proceeding. This overwhelmingly serves the interests of the litigants, absent parties, the judiciary and the public. It also provides a means for settling this controversy consistently, efficiently and sensibly. In *Provident Trademens Bank & Trust Co., supra,* 390 U.S. 102, 111, 19 L.Ed.2d 936, this Court observed:

> "[T]here remains the interest of the courts and the public in complete, consistent, and efficient settlement of controversies. We read the Rule's third criterion, whether the judgment issued in the absence of the non-joined person will be 'adequate,' to refer to this public stake in settling disputes by wholes, whenever possible, for clearly the plaintiff, who himself chose both the forum and the parties defendant, will not be heard to complain about the sufficiency of the relief obtainable against them. . . ."

This interest was also recognized in *Fouke v. Schenewerk,* 197 F.2d 234, 236 (5th Cir. 1952), where the Court stated:

> "There is no reason in this case for a court of equity to strain hard to find a way to adjudicate the merits of this controversy in the absence of interested parties whose presence was readily obtainable. . . . The decision of this controversy is governed by the local law of Texas; and the courts of Texas are open to the plaintiffs and fully competent to acquire jurisdiction in rem if not in personam."

See also:

*Haas v. Jefferson National Bank of Miami Beach, supra,* 442 F.2d 394, 399 ["It seems evident to us that the absence of Glueck in this litigation would, of necessity, result in less than a complete settlement of this controversy. . . . [T]here is no

semblance of a guarantee that a judgment on Haas' terms would settle the whole dispute generated by the facts here."].

*Broussard v. Columbia Gulf Transmission Company*, 398 F.2d 885, 888 (5th Cir. 1968) ["If the district court were to hear the case on the merits, its decision would merely begin rather than conclude litigation. . . . By any combination or permutation, . . . a reversal of the district court's dismissal would engender further litigation, i.e., multiplicity of suits."].

In the instant case, it is undeniable that all the damage claims based on Jaime Aguilar's alleged injury could not have been litigated in this federal action. This is so because Jaime Aguilar's parents are only authorized (Code of Civ. Proc. § 376)[5] to recover a portion of the damages which might ultimately be recoverable if liability is established; Jaime sought the remainder in the state court proceeding. Thus, it was absolutely impossible for complete relief to be afforded in the present lawsuit. In marked contrast, the entire controversy can be litigated among all interested parties in a single state court proceeding. Thus, it would have made no sense to allow Petitioners' unexplainable choice of an entirely unsatisfactory federal forum to take precedence over the rights of

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[5] California Code of Civil Procedure § 376 provides in pertinent part that the parents of an injured minor child may recover "such damages . . . as under all of the circumstances of the case may be just." This statute has been construed to permit an action by the parents to recover for certain forms of detriment occasioned by the minor's injury, such as medical expenses, earning capacity loss and lost services. The parents' action is an alternative to recovery by the minor, who may also sue to recover damages for all the forms of detriment resulting from his injury. See *Faitz v. Ruegg*, 114 Cal.App.3d 967, 971-972 (1981), and cases cited therein.

all interested parties to participate and be heard in a single, dispositive suit.

## CONCLUSION

Petitioners have identified no basis for invoking this Court's discretionary jurisdiction. The decision of the Ninth Circuit Court of Appeals was correct and fully consistent with the principles articulated by this court in *Provident Trademens Bank & Trust Co. v. Patterson, supra,* 390 U.S. 102. The Ninth Circuit's determination of relevant California law regarding the doctrine of collateral estoppel as it impacts on a Rule 19 dismissal issue, hardly warrants this Court's intervention.

For the foregoing reasons the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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